

1. Did claimant sustain personal injury by accident arising out of and in the course of employment with respondent?
2. If so, did claimant provide respondent with timely notice of the accidental injury?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the Board finds and concludes:

1. The preliminary hearing Order should be affirmed.
2. The Board finds that claimant sustained personal injury by accident arising out of and in the course of employment with respondent on October 16, 2000. On that date, claimant hit her forehead on a fire extinguisher while performing her duties as a dietary aide. The impact neither drew blood nor left any other mark on claimant. Following the accident, claimant worked the remainder of her shift without any problems. But when claimant went home that afternoon, she had difficulty getting out of her car. Claimant advised one of her daughters that she had hit her head at work.
3. The evening of October 16, 2000, claimant's daughter took her to the hospital emergency room. A CT scan was taken but the test was negative. The emergency room personnel could not explain claimant's headache and dizziness and told claimant to see her family physician. Claimant advised the emergency room personnel that she had bumped her head at work earlier that day.
4. Claimant then consulted her personal physician and on November 16, 2000, had an MRI. That test revealed a subdural hematoma and claimant was immediately scheduled for surgery, which was performed on November 17, 2000.
5. Claimant has not worked since the October 16, 2000 accident. The next morning, October 17, 2000, claimant felt ill. At that time, either claimant or her daughter telephoned respondent to report that claimant would not be coming to work that day. As claimant remained off work, claimant's daughter kept respondent apprised that claimant was ill and could not work. Claimant's daughter, Sossina Asfaw, testified, in part:

I told them [respondent] that we don't know what's going on, she's under a doctor's care, and when the doctor sent her to physical therapy I kept in touch with some of the supervisors and all . . .<sup>1</sup>
6. Respondent was not advised that claimant had been injured at work until after she underwent surgery. The parties stipulated that November 20, 2000, was the first date that respondent was given notice that claimant's symptoms were work-related.
7. Because of the nature of the accident, the nature of the resulting injury, the lack of immediate symptoms, the negative CT scan, and the emergency room personnel's failure to find anything wrong with claimant, there exists just cause to extend the period for

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<sup>1</sup> Preliminary Hearing, May 1, 2001; pp. 28, 29.

reporting the accidental injury from 10 days to 75 days.<sup>2</sup> Therefore, notice to respondent on November 20, 2000, was timely.

8. Respondent and its insurance carrier have also asked the Board to review the issue of whether claimant has proven she was temporarily and totally disabled commencing October 17, 2000. That issue may not be reviewed from a preliminary hearing order.<sup>3</sup> But it may be reserved for review at the time of final award.<sup>4</sup>

**WHEREFORE**, the Board affirms the May 2, 2001 preliminary hearing Order entered by Judge Howard.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 2001.

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BOARD MEMBER

c: Dennis L. Horner, Kansas City, KS  
Stephen P. Doherty, Kansas City, MO  
Steven J. Howard, Administrative Law Judge  
Philip S. Harness, Director

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<sup>2</sup> See K.S.A. 44-520.

<sup>3</sup> See K.S.A. 44-534a and K.S.A. 44-551.

<sup>4</sup> K.S.A. 44-534a(a)(2).